

**IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF MISSOURI**

**In re: BRYAN NEAL CHAPIN  
KELLY JO CHAPIN**

**Case No.: 23-40121-btf-13**

**Debtors**

**AMENDED MOTION TO DENY CONFIRMATION OF PLAN**

COMES NOW Richard V. Fink, Chapter 13 Trustee, and requests the court deny confirmation of the proposed plan (document #2), filed on or about January 30, 2023. In support thereof, the trustee states that the issues related to the proposed plan include:

1. 11 U.S.C. Section 544, 545, 547 or 548 avoidance issue:

The Statement of Financial Affairs indicates that Mrs. Chapin closed a 401k account and received \$3,000.00 in the Fall of 2022. In addition, Mr. Chapin closed a 401k account and received \$5,000.00 in the Spring of 2022. The debtors did not include this income in the income history section of the Statement of Financial Affairs. Please provide a detailed explanation to indicate how the debtors used these funds.

2. 11 U.S.C. Section 1325(a)(4) - Tenancy by the Entirety Issues:

It appears that there is non-exempt equity in property held under tenancy by the entireties that is being shielded from individual creditors. The debtors have scheduled debt with governmental entities that have not yet filed claims. Until the governmental bar date passes and the trustee can review the claims as filed, it is unclear whether the debtors are proposing a plan that will pay less to the unsecured creditors than if the estate were liquidated under Chapter 7.

3. 11 U.S.C. Section 1325(a)(6):

The debtors are proposing to pay their first and second mortgage payments directly. Based on information provided in the plan, the first mortgage payment is \$1,511.74 per month and the second mortgage payment is \$380.00 per month. Schedule J does not include the direct second mortgage payment. With this mortgage payment added, the debtors would have negative net monthly income and would not be able to fund the plan.

4. 11 U.S.C. Section 1325(b):

It appears from Schedule I that the debtors are currently repaying retirement loans in the amount of \$856.44 per month. Please provide documentation of the loans, including the balances of the loans at the time of filing, the monthly payments, and the rates of interest. If the loans will be paid off during the life of the plan, it is the trustee's position that funds used to repay the loans will become disposable income. Repayment of the loans is a known or virtually certain change in financial circumstances under *Hamilton v. Lanning*, 560 U.S. 505 (2010), and an increase in the payment is necessary under *Seafort v. Burden*

(In re Seafort), 669 F.3d 662 (6th Cir. 2012).

WHEREFORE, the Chapter 13 Trustee moves the Court for an Order Denying Confirmation of the proposed plan.

April 11, 2023

Respectfully submitted,

/s/ Richard V. Fink, Trustee

Richard V. Fink, Trustee  
2345 Grand Blvd., Ste. 1200  
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**NOTICE OF MOTION**

**Any response to the motion must be filed within twenty-one (21) days of the date of this notice (subject to an extension pursuant to Federal Rule of Bankruptcy Procedure 9006) with the Clerk of the United States Bankruptcy Court.**

Documents can be filed electronically at <http://ecf.mowb.uscourts.gov>. A copy of such response shall be served electronically by the Court on the Chapter 13 Trustee and all other parties to the case who have registered for electronic filing. Parties not represented by an attorney may mail a response to the Court at the address below. If a response is timely filed, the Court will either rule the matter based on the pleadings, or set the matter for a hearing. If a hearing is to be held, notice of such hearing will be sent to all parties in interest. **If no response is filed within twenty-one (21) days (subject to an extension pursuant to Federal Rule of Bankruptcy Procedure 9006), the Court will enter an Order denying confirmation of the plan.** For information about electronic filing, go to <http://www.mow.uscourts.gov>. If you have any questions about this document, contact your attorney.

Court Address: U.S. Bankruptcy Court, 400 E. 9th St., Room 1510, Kansas City, MO 64106

**NOTICE OF SERVICE**

The following parties will be served either electronically or by United States First Class Mail. If any party is served by United States First Class Mail a certificate of service will be filed thereafter:

DEBTOR(S)

WAGONER BANKRUPTCY GROUP (206) - ATTORNEY FOR DEBTOR(S)

/s/ Richard V. Fink, Trustee

KH /Motion - Deny Confirmation